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SUBJECT: KENYA ELECTIONS: ELECTORAL VIOLENCE - ECK AND POLICE RESPONSES

REF: A. NAIROBI 4601
1B. NAIROBI 4567
1C. NAIROBI 4512
1D. NAIROBI 4402
1E. AND PREVIOUS

11. (SBU) SUMMARY: The run up to the December 27 election is proving to be more violent than the last such contest in 2002, but still much less violent than Kenya's first two multiparty elections in 1992 and 1997. The majority of campaign activity falls within the bounds of the Electoral Code of Conduct. That said, apparent violations of the Code have been frequent; violence against women political aspirants, clashes between supporters of different parties or factions, campaign speeches and materials that qualify as prohibited hate speech. The ECK has been busy marshalling its limited resources to prepare the logistics of conducting the elections. It has not yet exercised its authority to sanction parties or candidates for violations of the Code of Conduct nor is it likely to do so. The Kenyan Police Service has acted professionally and been non-partisan in its reaction to campaign violence. One weak spot in police response has been a lack of protection for women political aspirants from violence. Although the Police Commissioner has offered increased protection to women candidates to combat violence and intimidation, implementation has been lacking, leading UNIFEM to criticize police response to violence against women aspirants. Police have made several arrests related to distribution of hate literature and attempts to transport weapons, again acting in a non-partisan manner. In an effort to stem hate speech, police have established media monitoring centers, but it is unclear what effect this initiative will have. Post is particularly concerned about the politically-motivated violence affecting Kuresoi and Molo constituencies in the central Rift Valley, where conflict between Kalenjin, Kikuyu, and Kisii communities in Kuresoi and Molo constituencies has displaced hundreds of families. If not resolved, the violence could threaten the ability to conduct free and fair elections in these constituencies. END SUMMARY

THE ELECTORAL CODE OF CONDUCT AND THE ECK'S ENFORCEMENT ROLE

2.(U) The Electoral Code of Conduct (the Code) requires registered parties and candidates to sign an oath pledging,

among others, to condemn, avoid, and take steps to avoid violence and intimidation, to affirm the right of all to express divergent political opinions, to canvas freely for membership and voters, to hold public meetings, to publish and distribute non-offensive campaign literature, banners, and other advertisements. Candidates and parties must ensure that no arms or weapons are carried or displayed at political meetings or marches, to refrain from vote-buying, and abuse of position in power, to avoid discrimination based on age, race, tribe, political opinion color, or gender. Political parties are obliged to take reasonable steps to discipline and restrain all party officials, supporters, and candidates who infringe the Code of Conduct.

13. (U) The ECK has the authority to enforce the Electoral Code of Conduct. It is empowered to issue warnings and fines. It may also bar parties from using allocated time on state-run media, or distribute campaign materials, placards, and other advertisements. If the ECK deems a violation of the Code of Conduct sufficiently severe, it may petition the High Court to ban an offending party or candidate from participating in the election.

VIOLENCE AGAINST WOMEN POLITICAL ASPIRANTS

14. (SBU) As previously reported, violence and intimidation against women political aspirants occurred frequently in the run-up to the political party nominations (reftels). In November, UNIFEM created a Gender Rapid Response Unit (GRRU) to provide resources to women political aspirants experiencing violence or intimidation. GRRU has tracked over 250 incidents of violence or intimidation aimed at women political aspirants. As the campaign moves into the general

election, women continue to be threatened and subjected to violent attack. An ODM woman political aspirant who lost at the nomination phase in Western province was shot and killed by gunmen while in Nairobi on December 1. Civil society organizations were quick to attribute a political motive to the attack, but police investigations are ongoing and have not established a motive for the crime. Alice Muthoni Wahome, a PNU woman parliamentary aspirant for Kandara constituency, Central Province, seemingly won the PNU nomination. She went to collect her nomination certificate at the PNU secretariat, but was attacked by supporters of a rival candidate, sustaining injuries to her head and legs. Although she was issued a valid PNU nomination certificate, she had to be treated in a hospital for her injuries, allowing her opponent (who had also been issued a facially valid PNU nomination certificate) to present his certificate to the ECK first and was recognized as the legitimate PNU candidate. Because of the confusion surrounding the political party nominations (reftel B), ECK Chair Kivuitu announced that the ECK would not adjudicate intra-party disputes over whose nomination certificates were valid, but would recognize party candidates presenting facially valid certificate on a 'first come, first served', basis, which encouraged machinations of all sorts and encouraged rival candidates to resort to violence of the sort Ms. Wahome experienced. Ms. Wahome continues her campaign as the candidate of Safina, a PNU-affiliate party.

15. (U) Women political aspirants are also frequently threatened, harassed, and intimidated by telephone or SMS messages. At a recent roundtable of women parliamentary candidates hosted by the Ambassador, tales of harassment and threats were depressingly commonplace.

16. (SBU) Civil society organizations have also appealed to both police and political parties to act to curb violence aimed at women political aspirants. Political party leaders have made statements calling on contestants to abide by the Code of Conduct, but no political party has sanctioned candidates for intimidation or violence aimed at women.

17. (SBU) Frustrated with uneven police response, a UNIFEM program officer recently accused the police of failing to

respond to reports of women when they are attacked.

CROSSING THE LINE: POLITICAL HATE SPEECH

¶8. (SBU) Both major parties and their supporters have engaged in speech that occasionally crosses the line into hate speech. This has taken the form of speeches at campaign rallies and, more often, pamphlets distributed by groups not directly traceable to political parties. Besides the traditional methods, both ODM and PNU supporters have been using more modern media, such as on-line chat rooms and SMS text messages.

¶9. (SBU) The majority of arguable hate speech has been aimed at ODM presidential candidate Raila Odinga. It has been financed by Kibaki supporters, but is not directly attributable to PNU. For example, in mid-November, a pamphlet was circulated in some Nairobi slums and Embu Province which inferred Raila was a devil worshipper. Playing on the ODM's highest body of electoral advisors, known as the Pentagon, the pamphlet conflated pentagon with pentagram. One side stated, 'Did you know the Pentagon (sic) is a sign of Devil Worship?', and showed a pentagram. The other side contained a pentagram superimposed over a picture of Raila, posing the question 'What does this Man Worship?', with text below the picture stating, 'Kalonzo (Musyoka) is a Baptist. Kibaki is a Catholic. Raila is What?'. To counter these attacks, Raila has financed a series of ads reinforcing his Anglicanism and his respect for all religious persuasions. President Kibaki has taken the high ground and condemned the use of hate speech. Apparently, these statements have fallen on deaf ears among his supporters.

¶10. (SBU) ODM has not been without fault in the campaign. Its approach to build a successful coalition is to reach out to communities that traditionally harbor anti-Kikuyu

resentments, often over land issues. (President Kibaki is a Kikuyu, as was Kenya's first President. The Kikuyu heartland is overpopulated. Kikuyu more than any other Kenyan ethnic community have spread throughout the country. In many areas they dominate business and the professions.). At times appeals to anti-Kikuyu sentiments crossed the line into hate speech. For example, Polcouns attended an ODM rally in Coastal Province in November where the anti-Kikuyu sentiments expressed by several figures bordered on hate speech (reftel D).

¶11. (U) Supporters of both sides have sent SMS messages containing highly inflammatory anti-Kikuyu and anti-Luo sentiments. Some of these have attacked Raila by pointing out that a 'boy' is unfit to run the country. Odinga's Luo tribe is one of the few in Kenya that does not circumcise its men. Those tribes that do circumcise consider the uncircumcised as not being men. Others play on stereotypes of Luo as lazy and state that Raila will bring the country to ruin. Likewise, President Kibaki and PNU have also come under attack in these fora. PNU has been accused of fomenting war in Kenya. Other postings demonize the Kikuyu for monopolizing power and characterize Kikuyu as "hyenas" and an 'evil tribe'.

ELECTION-RELATED VIOLENCE IN KURESOI/MOLO

¶12. (SBU) There are two glaring examples where police have not been able to maintain public order in the run-up to the election: Mount Elgon and Kuresoi/Molo. Conflict in Mount Elgon has been simmering for years and so can not be strictly considered election-related violence. However, since late October, intercommunal violence between Kalenjin (including among Kalenjin sub-tribes), Kikuyu, and Kisii communities has plagued Kuresoi and Molo constituencies, in central Rift Valley Province. After the first round of house burnings and raids, GSU paramilitary police were brought in and temporarily calmed the situation, but violence flared in November after political parties nominations process resulted

in allegations of a fixed ODM nomination. On December 4, the Provincial Commissioner and a Provincial Security team visited the region to lead peace committee meetings and implore local leaders to become more involved in settling the conflict. That same day two schoolchildren were murdered. Police estimate that approximately 300 families have been displaced, however the local Red Cross office estimates that almost 16,000 people have been displaced during the recent conflict.

¶13. (SBU) Christian and Islamic religious leaders and other local leaders have called on all the major presidential candidates to be more involved in finding a solution to the conflict. As a result, Raila Odinga visited affected areas on December 6, and presented relief supplies to the local Red Cross office. For his part, President Kibaki has issued a non-specific call for tolerance and to show the world Kenyans are a peaceful nation.

¶14. (SBU) Land ownership issues underlie the conflict, some dating back to colonial resettlement schemes. However, the Provincial Commissioner, during a recent visit to the area, stated that politicians were behind the current violence. Similar past instances of violence in 1992 and 1997 had strong political undertones as then-President Moi armed and organized pro-KANU Kalenjin raiders to attack pro-opposition Kikuyu homesteads to displace Kikuyu voters. While the current violence is politically motivated it is more nuanced than in the past. As a general proposition, Kalenjin in the area support ODM. The well-organized raids have predominantly targeted local Kikuyu and Kisii populations who tend to support PNU and Ford-People (also pro-Kibaki), respectively. However, unlike in the past, there is an element of Kalenjin on Kalenjin violence to the conflict. This is the result of an intra-ODM struggle where the Tugen and Kipsigis clans are backing a different ODM factions with violence resulting. There is also a small section of the Tugen clan that, following Moi's endorsement of Kibaki, supports PNU. They have also been subject to attack by Kalenjin raiders.

ECK RESPONSE TO VIOLATIONS OF THE CODE

¶15. (SBU) All sides have called on the ECK to sanction opponents for putative violations of the Electoral Code of Conduct. In most cases, the ECK has taken no action. However, on December 20th, the ECK issued summonses to five persons (including an Assistant Minister and four parliamentary candidates) in connection with incidents of political violence in two constituencies. The ECK has also requested the presence of the Police Commissioner to explain police responses to political violence (see below). The hearings are set for December 21st, though it is not clear whether the ECK will punish anyone. The ECK's reluctance up till now to sanction candidates is understandable. It is focused on organizing the massive logistical operation required to conduct the elections. Despite its wide mandate to sanction campaign misconduct, insufficient resources make it unable to fulfill a more meaningful role in policing campaign behavior.

POLICE RESPONSE TO CAMPAIGN VIOLENCE

¶16. (SBU) The Kenyan Police Service have taken pains to portray themselves as non-partisan guardians of public order. For the most part they have restricted themselves to policing campaign activity when it results in public disorder or threatens to do so.

¶17. (SBU) Most campaign violence has been sporadic bouts between hired supporters of rival political candidates and, even more often, between competing factions of the same party or coalition. For the most part, the violence ends shortly after it starts and police have succeeded in restoring public order. Police action in combating police violence has been non-partisan. For example, three aides to ODM Pentagon Member/ex-Minister of Health Charity Ngilu were arrested by

police for organizing attacks on ODM-K, Safina and PNU candidates in Kitui Central constituency, Eastern Province. In Naivasha, police confiscated machetes, clubs, and bows and arrows that were found in a car assigned to the Assistant Minister for Water. The Assistant Minister was not in the car, but police arrested the driver and later questioned the Assistant Minister for over 9 hours in Nairobi regarding his involvement in the incident. No charges have been filed against the Assistant Minister (reftel A). Police have reacted responsibly for the most part, and have frequently arrested perpetrators of election-related violence.

¶18. (SBU) Police response to violence against women has been less effective. As a result of repeated calls by women political aspirants and civil society groups for increased protection, Police Commissioner Hussein Ali made a public statement in mid-November that police would provide extra security to women aspirants. However, follow up at the local level has been lacking. Post surveyed a large number of women aspirants as to whether they had requested or received extra security from local police officials. In three cases, extra protection was provided - mostly for one-off campaign appearances. The Center for Multi-Party Democracy, a civil society organization, also organized women candidates to approach local police to request increased security. CMD reported that police did not respond positively to most requests.

¶19. (SBU) In most cases where women political aspirants requested enhanced security, local police offered to provide extra protection only if the candidate paid for the extra protection. According to candidates, the quoted price for extra police protection was in the range of 2000Ksh per day (approximately 32USD). As a general rule, women candidates are under-funded and are unable to pay for police protection. Therefore, they go without security, despite the dangerous environment in which they operate. If they are able to pay for security, they more often opt for a cheaper security option: paying gangs of unemployed (and untrained) youth for protection. Commissioner Ali's statement aside, the determining factor on whether or not women aspirants get extra security is the assessment of the local police

commissioner. If the police head is motivated, a candidate may receive protection for individual campaign events.

¶20. (SBU) Police have taken concrete actions against the distribution of hate literature. In early December, four men in Keiyo District, Rift Valley Province were arrested on suspicion of distributing hate literature. The pamphlets allegedly contained a picture doctored so that Raila Odinga appears to be hanging former president Daniel Arap Moi, with other prominent Kalenjin leaders await execution at the hands of Raila. The suspects were arrested by police after being chased by matatu drivers who had collected samples of the pamphlet and phoned the police to alert them. News reports stated that two of the four were members of the Kenya Administrative Police, a separate institution that answers to the Ministry of Interior, not the Kenyan National Police Commissioner (reftel A).

¶21. (SBU) To stem the flow of hate speech on the campaign trail, the police announced on December 1 the formation of a central media monitoring center to assess the content of speeches and campaign events. These centers are to be replicated at the Provincial level. Police have threatened to press criminal charges where they find that certain speech threatens to cause civil unrest. It is unclear whether this initiative will have teeth: it is likely that it is meant sending a signal to politicians to dampen their rhetoric and self-censor speech content. These monitoring efforts will not impede the use of hate speech disseminated on-line or through SMS.

22. (SBU) In connection with electoral violence in Kuresoi and Molo constituencies, police have arrested 100 suspects and charged 60 in connection with the violence. After the first round of house burnings and raids, GSU paramilitary police

were brought in and temporarily calmed the situation, but were unable to end the conflict. On December 6, Minister for Internal Security John Michuki visited the region and gathered leaders to broker a cease fire. At the conclusion of the day long talks, Michuki announced the deployment of a helicopter squad to the area to augment security forces already there. While there are no indications that local police are involved in the attacks, we have heard that police effectiveness has been hampered because individual officer's response has, at times, been colored by ethnic ties to affected communities (Kenyan police are normally not assigned to their local communities, but Kalenjin, Kikuyu and Kisii police officers from outside the area can serve in the area).

Some suggest that stationing of police from outside the area with no ethnic ties to any community will increase police effectiveness in containing the violence in Kuresoi and Molo.

COMMENT

¶23. (SBU) Opinion polls show a close race between Kibaki and Raila Odinga, and we expect the campaign to be hard fought and tense, with sporadic conflict between rival supporters. The ECK has played an active role in bringing together political parties to reduce some of the tension around the elections, such as brokering agreements on the use of master registration lists to enable the widest possible franchise, but it has not until now punished violations of the Code of Conduct. Given its limited resources, ECK efforts to punish violations of the Code could not be comprehensive, and selective punishment could open it up to allegations of partiality. The ECK has instead focused on undertaking the logistical preparations necessary to conduct the elections. To their credit, the police have acted in a neutral and professional manner to instances of violence, although they have largely failed to protect women candidates. Public outcry over electoral violence has lead to a public spat between the ECK Chairman, the Police Commissioner, and the Attorney General's office, with each stating that the other two institutions should be more active in punishing violators of the Code. We are concerned by the ongoing violence in the Mount Elgon and Kuresoi/Molo regions, which, if it remains unresolved, could impact the ability to conduct elections in these areas. Minister Michuki's move to deploy a helicopter squad to Kuresoi, while welcome, is open to interpretation as

government intervention to assist the afflicted Kikuyu community, in contrast to the more laissez faire approach in Mt. Elgon, which does not impact Kikuyu (both Kibaki and Michuki are Kikuyu). But the fact remains that, thus far, the national police have performed their duties in a professional and neutral manner. This is a welcome sign that the campaign, though hard fought and occasionally violent, will not spin out of control. END COMMENT

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